IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 33875 of 2007(G)

AGAINST THE ORDER DATED 08/10/2007 IN IA 1786/06 IN OS.166/2006 of MUNSIFF COURT,VARKALA
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PETITIONER:

BEENA S., D/O. SATHIYABHAMA,
PULARI VEEDU, MANJADI VILLAGE, CHIRAYINKEEZHU,
FROM POIKAVILA VEEDU, VETTIYARA P.O.,
NAVAIKULAM VILLAGE.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:
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1. L.SATHI,
PUTHUMANA VEEDU, PARAVOOR, KOTTAPPURAM VILLAGE.

2. BAIJU, S/O. HAREENDRADAS,
KOCHU VEEDU, MOONGODU P.O., KAVALAYOOR,
CHIRAYINKEEZHU, FROM POIKAVILA VEEDU,
VETTIYARA P.O., NAVAIKULAM VILLAGE.

3. D.DAKSHAYANI,
PLAVILA VEEDU, THIRUNARAYANAPURAM DESOM,
OTTOOR VILLAGE, REPRESENTED BY NEXT FRIEND,
YAMUNABHAI.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 33875 OF 2007

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Dated this the 16th day of November, 2007.

J U D G M E N T

This writ petition is filed against the order of the Munsiff, Varkala in I.A.1786/06 in O.S.166/06. The main prayer in the interim application is to summon the attestors to the Will as they are old and delay in examination may result in non-availability of those witnesses. The suit is one for declaration and the defendants resisted the claim on the ground of a Will executed by Hareendradas and by virtue of the said Will the absolute right had been conferred upon the defendant. The prayer in the interim application as seen from paragraph 5 of the affidavit is to the effect that the attestors to the will are very old people and delay caused in examining them may result in non-availability and therefore the Court has to grant permission for the examination of those witnesses. The learned counsel for the writ petitioner had drawn my attention to Order 18 Rule 16 of CPC wherein

the Code itself stated that where the witness is about to leave the jurisdiction of the Court or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately the Court may on the application of any party or witness at any time after the institution of the suit, take evidence of such witness in the manner provided. The whole evidence depends upon the validity, genuineness and proof of the Will relied upon by the defendant. The defendants have alleged that attestors are old and the delay in examining them may result in their non-availability. Since the crux of the matter depends upon the genuineness of the Will and if the Court is convinced that the grounds stated that the witnesses are very old and the delay in examination may entail in their non-availability it is only just and proper that Order 18 Rule 16 is invoked to do justice to the parties. Equally it is important that the petitioner has to satisfy the conscience of the Court regarding the imperative necessity for the reason that Order 18 Rule 16 carves out an exception to the original Rule. Therefore, I set

aside the order of the Court below and direct the Court below to consider the matter afresh and if the present petitioner is able to establish before Court regarding the real urgency in examination of those witnesses for the reasons enunciated in Order 18 Rule 16, the Court may consider the same and pass appropriate orders after hearing both sides.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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